

ESTTA Tracking number: **ESTTA613042**

Filing date: **07/01/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91216576
Party	Plaintiff Carolina Moon Distillery, LLC
Correspondence Address	Pao Lin Hatch 22988 Fairgale Farm Lane Chestertown, MD 21620 UNITED STATES paoball2000@yahoo.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Pao Lin Hatch
Filer's e-mail	paoball2000@yahoo.com
Signature	/Pao Lin Hatch/
Date	07/01/2014
Attachments	Amended Application-Prior use claim to the trademark-Opposition to mark filing.pdf(119002 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of trademark application 86011077

For the mark of *Carolina Moon*

Published in the Official Gazette on 5/20/14

Carolina Moon Distillery, LLC vs.

Opposer

v.

Terressentia Corporation

Applicant

NOTICE OF AMENDED OPPOSITION

CAROLINA MOON DISTILLERY, LLC

DBA CAROLINA MOON DISTILLERY

PO BOX 268

EDGEFIELD, SC 29824

The above-identified oppose believes that it will be damaged by the registration of the mark show in the above-identified application and hereby opposes the same.

FACTS

As of Oct 17, 2011, Carolina Moon, LLC has been in existence under S.C. State law.

- 1) The long process of obtaining a Federal Alcohol and Tobacco License to distill and sell alcohol was initiated. Under the laws governing the TTB license, all aspects of establishing yourself as a corporation or an individual capable of legally producing and selling must be in place before you are allowed to manufacture distilled spirits, distill distilled spirits or sell distilled spirit products. As such, the Federal Law requires the following steps listed but not limited to:
 - a) Acquisition of a suitable physical site to distill,
 - b) Obtaining a sufficient bond to cover US Federal Tax liability,
 - c) Obtaining a state Liquor license
- 2) Until such steps are completed, you MAY NOT DISTILL , MANUFACTURE or SELL ALCOHOL to the general public.
- 3) You are however, permitted to sell souvenirs and otherwise promote your coming business.
- 4) Carolina Moon Distillery, LLC. Initiated those steps and began building out their current physical distillery location at 116 Courthouse Square, Edgefield, SC on April 5, 2013. The Building purchase documents filed in Edgefield County Courthouse on or about May 1, 2013.
- 5) Carolina Moon Distillery began its presence to the world via the social media site, FaceBook, on April 11, 2011. The Facebook presence has been continuously in use since that date.
- 6) Carolina Moon Distillery's Facebook page posted an image of their logo on April 19, 2013.
- 7) Terressentia filed its application for Trademark of *Carolina Moon* on or about May 2013 with the intent to use. To date, Terressentia has not used the mark in any format nor venue.
- 8) Finally on August 8, 2013, Carolina Moon Distillery has been licensed with the State and Federal ATT and TBB
- 9) The facility was approved for use by the City of Edgefield in December 2013, and officially on December 14, 2013, Carolina Moon Distillery, LLC has been open for business to the general public, selling various licensed alcoholic beverages. Additionally a separate business, pursuant to the guidance of South Carolina Alcohol and Tobacco laws, dba Pao Lin's Pretty Gifts, has been selling Carolina Moon Distillery logo products (clothing, souvenirs, glassware, etc.) with its copyrighted image, as filed under US Copyright Office filed on 11/14/2013.
- 10) Since December 2013, Carolina Moon Distillery has been paying all required US Federal Sales taxes, South Carolina Sales Taxes and Edgefield County Sales Taxes and generally been recognized as a legally identified entity, operation and doing business in Edgefield, South Carolina 29824. See news articles submitted in evidence.

- 11) Upon discovery of the Terressentia application for trademark was made by the President of Carolina Moon Distillery, LLC and immediately a friendly letter was sent on May 7, 2014 to the person of record for Terressentia. This was prior to the Notice of Opposition filed by the Opposer.
- 12) Opposition was filed by Carolina Moon Distillery, LLC on May 28, 2014; Amended herein.

CAROLINA MOON DISTILLERY, LLC WOULD BE DAMAGED BY THE REGISTRATION OF THE OPPOSED MARK

Affirmative Defenses:

I

Failure to Violate Federal Title 27 USC TB Laws cannot serve as a basis for applicant's position that there has been no used by Opposer of the mark

Under Section 203 of Federal Title 27, Federal Alcohol Administration Act, It is

“...In order to effectively regulate interstate and foreign commerce in distilled spirits, wine..., to enforce the 21st amendment, and to protect the revenue and enforce the postal laws with respect to distilled spirits:

a) it shall be unlawful, except pursuant to a basic permit issued by this subchapter by the Secretary of the Treasury—

- 1) to engage in the business of importing distilled spirits
- 2) for any person so engaged to sell, offer or deliver for sale...
- 3) to engage in the process of distilling distilled spirits,
- 4) to offer to sell distilled spirits. Et. Seq.

It has been acknowledged by the applicant, that although Carolina Moon Distillery, LLC was in existence and actively engaged in marketing and other related activities, any such activities or uses where not there has been no alcohol production or sales do not meet the trademark definition that prior business use has occurred. We dispute this interpretation of the term ‘use’.

It is well grounded in common law that where the action would be a violation of the law, the party to whom the action is required may not be held accountable for their decision NOT to violate the law.

The proposed position of the Applicant, Terressentia would be completely in opposition to established common law regarding illegality of actions.

II

Carolina Moon Distillery, LLC has established a common law prior use to the trademark by its registration with the federal government, state government and common usage of the mark prior to the date of registration by the Application

Carolina Moon Distillery, LLC. has been continuously using and holding out the trade name of Carolina Moon Distillery with respect to its dealings with the US Government, the State of Carolina and the general public since 2012. Under Federal Alcohol and Tobacco laws, Carolina Moon Distillery would be in clear violation of federal law by making, selling or distribution of alcoholic beverages before a license was obtained. One cannot argue that one Federal law should be explicitly disobeyed when another Federal law would require action in violation of that law. Should this Trademark board interpretate use as proposed by Terressentia, they would be advocating the position that Carolina Moon Distillery, LLC. must violated Federal Alcohol and Tobacco laws and manufacture and sell alcoholic beverages before they had received their license.

However, Carolina Moon Distillery, LLC did advertise and promote itself as a coming business as early as 2012 which was clearly before the date of filing by Terressential Corporation. To date Terressential Corporation has not used the trademark, produced any product nor suffered any damages to date.

Should Terressential be permitted to register this trademark, Carolina Moon Distillery would be damaged by the registration of the opposed mark, creating confusion with respect to the sale and marketing of the products, to wit: Distilled Spirits.

III

Damages to Carrolina Moon Distillery, LLC should Terressentia be allowed to register the mark of CAROLINA MOON

Should Terressentia be permitted to register this trademark, Carolina Moon Distillery would be damaged by the registration of the opposed mark. With an established 'brick and mortar' location, local visitors can come to our physical location in Edgefield, SC, see our window signs of *Carolina Moon Distillery*, walk in and buy a bottle of distilled spirits from the *Carolina Moon Distillery*.

Labels have been created and are applied on various distilled spirits sold by Carolina Moon Distillery and all say "Carolina Moon Distillery" on their face. Labels, as approved by the federal agency TTB all have

been approved utilizing the name Carolina Moon Distillery, as submitted by previous evidence in support, creating terrible confusion to the general public with respect to the sale and marketing of the products, to wit: Distilled Spirits. Additionally, Carolina Moon Distillery, LLC would have to amend its pre-existing license with the Federal Government, State License, Internal Revenue Service, Edgefield Town Licensing board.

Terressentia, to date, has suffered no damage to their name, company, product (or lack thereof) reputation. Minor expenses may have been incurred by Terressentia but since the product is not even in production, it's hard to believe they are of any consequences.

Conclusion

Carolina Moon Distillery's opposition to the registration by Terressentia of the Trademark *Carolina Moon* as it applies to Distilled Spirits should be denied.

/Pao Lin Hatch/

Pao Lin Hatch, Member of the Maryland and Florida

Attorney of Record

22988 Fairgale Farm Lane

Chestertown, MD 21620

240 274 6180

Copies attached